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File No. O. Munis Govt. Tax/41

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Subject:—

Opinions:- Re Taxation of State owned Buildings by Municipalities

P. 8 / E

File No. O. Munis Govt Tax/41.

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182-B

CONTENTS

Legal Department File No. O. Munis Govt. Tax/1941.

Sr. No.	Compilation No.	Subject	Pages.
		Opinions re: Taxation of State owned Building by Municipalities.	
1.	R.I. No. 9631 dt. 12/11/40. O.No. 966 dt. 1/2/41.	Whether the buildings of the M. & S.M. Rly. at Dharwar are liable to the levy of the general water tax and general sanitary cess.	1 - 2.
2.	R.I. No. 692 dt. 21/1/41. O.No. 1992 dt. 6/3/41.	Whether the Rly. Administration would be liable to pay the house tax to the Igatpuri Municipality under the proviso to sec. 154 of the Govt. of India Act.	3 - 4.
3.	R.I.No. 6299/41 O.No. 7298 dt. 19/8/41.	Whether the Ghatkopar Municipality is competent to levy a house tax on buildings constructed by the G.I.P. Rly. Administration.	5 - 8.
4.	R.I.No. 5242 dt. 11/6/41. O. No. 9105 dt. 18/10/41.	(i) Whether the land under the non-residential buildings should be taken into consideration in determining the capital value of these buildings. (ii) Whether land under the rails is liable to be assessed for tax.	9 - 14.

Rele. M.S.
9/7/56.

13/9

13/9

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the buildings of the M. & S.M. Railway at Dharwar are liable to the levy of the general water tax and general sanitary cess.

2. Section 154 of the Government of India Act, 1935, provides that property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Provice or Federal State: Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of the Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable thereto. The M. & S.M. Railway is a State owned Federal Railway. It appears from the Government of India, Railway Department (Railway Board) Notification No. 230, dated the 24th August 1911, issued in pursuance of section 135 of the Indian Railways Act, 1890, that the administration of the M.& S.M. Railway is declared liable to pay only the house tax to the Dharwar Municipality. Under the proviso to section 154 therefore the Railway buildings at Dharwar would continue to be liable to pay that tax. In view of the provisions of section 135(1) of the Indian Railways Act, 1890 and in the absence of any Federal law on the

subject the Railway buildings in question cannot be subjected to the levy of either the gneral sanitary cess or the general water tax. The view taken by the President Municipal Borough, Dharwar in his letter No. 976 dated the 8the June 1940 is legally correct.

3. A fee of Rs. 80/- may be charged for this opinion.

Id/-

Remembrancer of Legal Affairs.

U.R. to G.D. No. 906, dated the 1st Feb. 1941.

MSR.
9/7.

Office of the R.L.A.

Section 154 of the Government of India Act, 1935, provides for exemption from all taxes of the property vested in His Majesty for purposes of the government of the Federation. The proviso to it says that until any Federal law otherwise provides, any property so vested which was immediately beofore the commencement of Part III of this Act liable or treated as liable to any such tax, shall, so long as the tax remains, continue to be liable or to be treated as liable, thereto. By the Notification of the Government of India, Ry. Department (Ry. Board) No. 121, dated the 13th May 1914, issued under clause (1) of section 135 of the Indian Railways Act, 1890, the administration of the G.I.P.Ry. has been made liable to pay inter alia the house tax to the Igatpuri Municipality. Although the house tax was not actually imposed upon the Railway Administration by the Igatpuri Municipality before the 1st April 1937, the Railway Administration was in respect of this class of property liable or treated as liable to the house tax before the 1st April 1937 under the aforesaid Notification within the meaning of the provision to section 154 of the Government of India Act (See R.L.A.'s U.R. to F.D. No. 12167 dated the 24th November 1939) and the Igatpuri Municipality has not abolished the house tax. Consequently it appears that the Railway Administration would be liable to pay the house tax to the Igatpuri Municipality under the proviso to section 154 of the Government of India Act.

The view taken by the Commissioner in his endorsement at page 11 ante appears to be correct.

Id/-

5/3.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 1992 , dated the

6th March 1941.

MSR.
9/7.

Office of the R.L.A.

Para. 1 of the G.D. office note at p. 11-12 ante:- The question raised for consideration of the R.L.A. is whether the Ghatkopar Municipality is competent to levy a house tax on buildings constructed by the G.I.P. Railway Administration within the limits of the Municipality after 31st March 1937. Section 154 of the Government of India Act provides that property vested in His Majesty for purposes of the Government of the Federation shall, save in so far as any Federal law may otherwise provide be exempt from all taxes imposed by any authority within the Province. The proviso to the section states, that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable or treated as liable to any such tax shall so long as that tax continues, continue to be liable, or to be treated as liable, thereto. Buildings of the Railway Administration which were not in existence before 1st April 1937, the date of commencement of Part III of the Act, were not liable to the house tax before this date and will not therefore fall under the proviso to this section. On a plain reading of this section therefore, it does not appear that such buildings can be held liable to the levy of the house tax although such tax was levied by the municipality on other buildings of the Railway Administration, before 1st April 1937. The question considered in the opinion of the R.L.A. No. 1992 dated 6th March

1941 referred to in the G.D. office note at p-11 related to property which was in existence before 1st April 1937 and as the property was in fact liable to the house tax before 1st April 1937 it was held that the property continued to liable to such tax after 1st April 1937. The buildings in question in the present case were not in existence before 1st April 1937 and consequently it does not appear that the Municipality would be competent to levy the house tax on them .

2. Para. 3 of the G.D. office note at p. 13 ante:- The view taken in para. 2 of the Commissioner's letter at p. 8 ante that he will have to fix a lump sum in lieu of the whole tax having regard to all the circumstances of the case, that such sum may be less or more than the amount paid before 1st April 1937 and that he has a discretion to fix any sum which he considers fair and reasonable is correct.

3. Para- 4 of the G.D. office note:- The words "having regard to all the circumstances" in section 135(2) of the Indian Railways Act clearly indicate that the Commissioner in exercising his powers under this provision has also to consider whether the Railway authority is in law liable to pay the tax to the local authority i.e. whether the amount is leviable under the provisions of the Municipal Boroughs Act. Consequently the Commissioner should also take into consideration the provisions of

sections 82 and 84 of the Bombay Municipal Boroughs Act. The view taken in the G.D. office note is correct.

Id/-

15/8

Remembrancer of Legal Affairs.

U.R. to C.D. No. 7298, dated the

19th August 1941.

MSR.
9/7.

Office of the R.L.A.

By Government of India (Railway Department) Notification No. 230, dated the 24th August 1911 issued under section 135 of the Indian Railways Act, 1890, as amended by Notification No. 243 dated the 25th September 1914, the M.& S.M. Rly. was made liable to pay the "house and conservancy taxes" to the Poona Municipality. A house tax was accordingly levied by the Poona Suburban Municipality on the property belonging to the M. & S.M.Railway within its limits. Prior to 1938-39, the entire railway property was assessed by the Municipality to such tax on the annual rental value. From 1938-39 the Municipality refixed the tax according to certain new rules made by it under section 58(j) of the Bombay Municipal Boroughs Act, 1925. By these rules, the process of assessment was varied and in the case of all non-residential buildings, open lands and yards belonging to the railway company, the taxes were levied on the basis of capital value and in the case of residential buildings on the basis of the annual renal value. In fixing the capital value of the non-residential building the Municipality included the value of the land under such buildings. The tax was also levied on the land under the rails.

2. The first question raised for consideration of the R.L.A. is whether the land under the non-residential buildings should be taken into consideration in determining the capital value of these buildings for purposes of assesment in view

of section 154 of the Government of India Act, 1935. This section provides for exemption of proper-ty vested in the Central Government from taxes imposed by any authority within a Province. The proviso to the section states that until any federal law otherwise provides any such property which was immediately before 1st April 1937 liable or treated as liable to any such tax shall so long as that tax continues, continue to be liable or to be treated as liable thereto. By the Government of India (Railway Department) Notification No. 230 dated 24th August 1911, the M.& S.M.Rly. was made liable to pay house tax to the Poona Suburban Municipality. Before 1st April 1937, the Poona Suburban Municipality had imposed house tax on the non-residential buildings of the railway and the buildings were liable to such tax. Consequently, under the proviso to section 154 of the Government of India Act, the non-residential buildings continue to be liable to the house tax. (See R.L.A's No. 1992 dated 6th March 1941) . The expression "house tax" has not been used either in the Bombay Municipal Boroughs Act which now applies to the Poona Suburban Municipality or in the Bombay District Municipal Act which applied to it when the Government of India Notification of 1911 was issued. Section 73(1) of the Municipal Boroughs Act and section 59 of the District Municipal Act provide for imposition of a rate on buildings or lands or both. A house tax would be a rate on build-ings within the meaning of these Acts. The Municipal

Boroughs Act provides for assessment of such tax on the valuation of the buildings based on either capital value or annual letting value (section 78 of the Act). Before 1st April 1937, the valuation of the non-residential buildings of the railway in this case was made by the Municipality on annual letting value of the buildings. Since 1938-39 it is made on the capital value of the buildings. The change made by the Municipality is not in the kind of tax but in the process of the valuation for the purposes of the assessment of the tax. The tax is saved by the proviso to section 154. Consequently the Municipality was justified in taking into consideration for assessment purpose the capital value of the lands under buildings used for non-residential purposes.

3. The next question referred to the R.L.A. for consideration is whether land under the rails is liable to be assessed for tax as the Government of India have not before the 1st April 1937 declared it to be so liable. Under section 135(1) of the Indian Railways Act, a railway administration is not liable to pay any tax in aid of the funds of any local authority unless the general controlling authority has, by notification in the Official Gazette declared such administration to be liable to pay the tax. By the Government of India (Railway Department) Notification No. 230 dated 24th August 1911, the M. & S.M. Railway administration is declared to be liable to pay house and conservancy taxes to the Poona Suburban Municipality. As pointed out in paragraph 2 above, a house tax would be a rate on

buildings within the meaning of the Bombay Municipal Boroughs Act. It would not include a rate on lands. The tax on lands under the rails would be a rate on lands. The tax is not authorised under the Government of India Notification referred to above. The levy of the tax would, therefore, be illegal.

Id/-

16/10.

Remembrancer of Legal Affairs.

U.R.-to G.D. , No. 9105, dated the 18th October 1941.

MSR.
9/7.